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SERVICE DATE - NOVEMBER 20, 2001

## SURFACE TRANSPORTATION BOARD

### DECISION

STB Finance Docket No. 34086 (Sub-No. 1)

#### THE COLUMBIA AND COWLITZ RAILWAY COMPANY—TRACKAGE RIGHTS EXEMPTION—THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

Decided: November 9, 2001

By petition filed September 28, 2001, The Columbia and Cowlitz Railway Company (CLC) requests that the Board permit the trackage rights arrangement exempted in STB Finance Docket No. 34086<sup>1</sup> to extend only until March 1, 2002.

According to CLC, the temporary trackage rights arrangement exempted in STB Finance Docket No. 34086 is necessary because CLC will be performing maintenance and repairs on its own line and will be utilizing the trackage rights over BNSF's line as an alternate route for CLC's traffic pending completion of its construction work. CLC states that it suffered a substantial trestle fire on July 2, 2001, which severed its connection between Columbia Junction, WA, and Rocky Point. However, CLC states that it is only seeking, and BNSF is only willing to grant, temporary trackage rights over BNSF trackage during the period of maintenance and repair on CLC's line. CLC maintains that, without approval of the temporary trackage rights, it is unlikely that any other arrangement can be reached to allow CLC to operate over BNSF's line, and CLC would face the possibility of disruption of service on its line.

### DISCUSSION AND CONCLUSIONS

Although CLC and BNSF have expressly agreed on the term of the proposed temporary trackage rights arrangement, trackage rights approved under the class exemption normally remain effective indefinitely regardless of any durational contract provisions. Occasionally,

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<sup>1</sup> On August 27, 2001, CLC filed a notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7). The notice covered the trackage rights agreement (agreement) by The Burlington Northern and Santa Fe Railway Company (BNSF) to grant temporary overhead trackage rights to CLC over BNSF's line between Rocky Point, WA (BNSF milepost 95.8), and Longview, WA (BNSF milepost 101.1), a distance of 5.3 miles. See The Columbia and Cowlitz Railway Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 34086 (STB served Sept. 14, 2001). The agreement is scheduled to expire on March 1, 2002. The trackage rights operations under the exemption were scheduled to be consummated on September 3, 2001.

trackage rights exemptions have been granted for a limited term rather than in perpetuity. See Union Pacific Railroad Company–Trackage Rights Exemption–The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 34082 (Sub-No. 1) (STB served Sept. 13, 2001); Union Pacific Railroad Company–Trackage Rights Exemption–The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 34053 (Sub-No. 1) (STB served July 17, 2001); Union Pacific Railroad Company–Trackage Rights Exemption–The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 34058 (Sub-No. 1) (STB served July 16, 2001); Union Pacific Railroad Company–Trackage Rights Exemption–The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 34055 (Sub-No. 1) (STB served June 22, 2001).

Under 49 U.S.C. 10502, we may exempt a person, class of persons, or a transaction or service, in whole or in part, when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either the transaction or service is of limited scope, or regulation is not necessary to protect shippers from the abuse of market power.

CLC's temporary trackage rights have already been authorized under the class exemption at 49 CFR 1180.2(d)(7). See Railroad Consolidation Procedures, 1 I.C.C.2d 270 (1985). Limiting the term of the trackage rights is consistent with the limited scope of the transaction previously exempted and will have no adverse impact on shippers on the line as the trackage rights that are the subject of the exemption are for overhead traffic only. Therefore, we will grant the petition and permit the trackage rights exempted in STB Finance Docket No. 34086 to expire on March 1, 2002.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Under 49 U.S.C. 10502, we exempt the trackage rights described in STB Finance Docket No. 34086, as discussed above, to permit the trackage rights to expire on March 1, 2002.
2. Notice will be published in the Federal Register on November 20, 2001.
3. This decision is effective on December 20, 2001.
4. Petitions to reopen must be filed by December 10, 2001.

STB Finance Docket No. 34086 (Sub-No. 1)

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams  
Secretary